

Message Text

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ACTION OES-06

INFO OCT-01 IO-13 AF-08 ARA-06 EA-07 EUR-12 NEA-10
ISO-00 ACDA-07 CIAE-00 DODE-00 PM-04 INR-07 L-03
NSAE-00 NASA-01 NSC-05 ERDA-05 SP-02 EB-08 SS-15
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FM USMISSION USUN NEW YORK
TO SECSTATE WASHDC 3114
INFO AMEMBASSY BOGOTA
AMEMBASSY GEORGETOWN
AMEMBASSY QUITO

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E.O. 11652: N/A
TAGS: TSPA, AORG, UN ETEL
SUBJECT: OUTER SPACE LEGAL SUBCOMMITTEE - APRIL 6, 1977

REF: A) STATE 075469 AND 260266(1976)
B) USUN 1049 C) USUN 809 D) USUN 1010

1. SUMMARY: LEGAL SUBCOMMITTEE (LSC) CONCLUDED CONSIDER-
ATION OF DEFINITION/DELIMITATION ITEM AND RELATED GEO-
STATIONARY ORBIT ISSUE WITH STATEMENTS BY US, FRANCE,
ARGENTINA, CANADA, AUSTRALIA, USSR, BRAZIL, SWEDEN, JAPAN
AND FRG. DRAFT UNGA RES COMMEMORATING 10TH ANNIVERSARY
OF 1976 OUTER SPACE TREATY WAS ADOPTED AS A RECOMMENDATION
TO PARENT COMMITTEE. LSC APPROVED REPORTS OF WORKING
GROUP (WG) 1 ON MOON TREATY AND OF WG-III ON REMOTE
SENSING. WG-II ON DIRECT BROADCASTING SATELLITES (DBS)
REACHED PARTIAL AGREEMENT ON ITS REPORT. END SUMMARY.

2. DEFINITION/DELIMITATION. CHAIRMAN WYZNER CONVENED
LSC'S APRIL 6 A.M. PLENARY BY CALLING FOR REMIANING
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STATEMENTS ON AGENDA ITEM 5, DEFINITION/DELIMITATION
OF OUTER SPACE. US(STEWART) MADE STATEMENT PER REFTELS (A)
TAKING ISSUE WITH CLAIMS OF EQUATORIAL STATES TO EXCLUSIVE
JURISDICTION AND NATIONAL SOVEREIGNTY OVER THE GEO-
STATIONARY ORBIT (GSO). SAID US COULD NOT AGREE FROM
SCIENTIFIC/TECHNICAL VIEWPOINT THAT GSO HAD ANY SPECIAL
PHYSICAL RELATIONSHIP TO SUBJACENT STATES; CHARACTERISTICS

OF THAT ORBIT ARE DEPENDENT NOT ONLY ON THE GRAVITATIONAL FIELD OF WHOLE EARTH, BUT ALSO ON COMBINATION OF OTHER FACTORS SUCH AS VELOCITY, ALTITUDE AND AZIMUTH OF SATELLITE INSERTION AS WELL AS MASS OF SPACECRAFT. SINCE GSO LIES IN OUTER SPACE, ARTICLES I AND II OF 1967 OUTER SPACE TREATY PRECLUDE UNILATERAL CLAIMS OF SOVEREIGNTY OVER THAT LOCATION AS MATTER OF LAW.

3. IN SHORT STATEMENT, FRANCE (LE GOURRIEREC) SAID THE LAW WITH RESPECT TO DEFINITION/DELIMITATION IS IN THE PROCESS OF EVOLUTION AND WORK SHOULD CONTINUE IN LSC. HE STRESSED THE IMPORTANCE OF DISTINGUISHING BETWEEN AIR LAW AND SPACE LAW; THE FORMER DEALS WITH SOVEREIGNTY ISSUES. SAID THAT SCIENTIFIC/TECHNICAL CONSIDERATIONS COULD BE USED AS A GENERAL BASIS FOR AGREEING ON A DEFINITION.

4. ARGENTINA (COCCA) INTERJECTED COMMENTS ON CONSULTATION AND AGREEMENT ISSUE IN DIRECT BROADCASTING SATELLITES (DBS). SAID THAT BECAUSE THERE IS NO CONSENSUS, ARGENTINA HAS DIFFICULTIES AGREEING TO THE TEXT OF DRAFT PRINCIPLE X (REF B), AS IT HAS BEEN DRAFTED TO DATE. SPILLOVER PROBLEM REMAINS BUT WILL BE REDUCED TECHNICALLY IN THE FUTURE; THERFORE, HE SAW NO NEED TO MAKE EXCEPTION TO LEGAL PRINCIPLES BECAUSE OF A TRANSITORY TECHNICAL PROBLEM. STRESSED THAT HE PREFERENCES AN "OBJECTIVE" DEFINITION OF SPILLOVER; SAID THERE CANNOT BE HARMONY AS LONG AS ITU RADIO REG. 428A ACCEPTS SPILLOVER AS A TECHNOLOGICAL FACT. HE SAID THAT A LIMITED OFFICIAL USE

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ANY SPILLOVER MUST BE COVERED BY THE PRIOR AGREEMENT PROCEDURE. REGARDING GSO, HE TOOK EXCEPTION TO THE USDEL'S TECHNICAL ANALYSIS (PARA 2), POINTING OUT THAT ARTICLE 33 OF THE ITU CONVENTION STATES THAT THE GSO IS A LIMITED NATURAL RESOURCE. HE AGREED WITH THE FRENCH STATEMENT THAT DEFINITION/DELIMITATION OF AIR AND SPACE SHOULD BE PURSUED ACTIVELY AS A MATTER OF THE HIGHEST PRIORITY.

5. CANADA (DICKSON) EXPRESSED AGREEMENT WITH THE UK'S ANALYSIS (REF. C) THAT THERE IS NO PRESSING NEED FOR A DEFINITION OF OUTER SPACE, SINCE LACK OF A PRECISE DEFINITION HAS NOT SLOWED THE PROGRESS OF SPACE ACTIVITIES UP TO THIS POINT. REGARDING CLAIMS OF SOVEREIGNTY OVER THE GSO MADE BY SOME COUNTRIES (E.G. BOGOTA DECLARATION), HE FOUND NO INTERNATIONAL LEGAL PRINCIPLE TO SUPPORT SUCH A CLAIM. FROM A TECHNICAL POINT OF VIEW, HE SAID, THE GSO IS NOT A UNIQUE ENTITY THAT BEARS ANY SPECIAL RELATIONSHIP TO EQUATORIAL COUNTRIES.

6. AUSTRALIA (LAMB) SUPPORTED POSITION THAT THE GSO IS IN OUTER SPACE AND NOT SUBJECT TO ANY CLAIM OF SOVEREIGNTY BY ANY COUNTRY. THE BOGOTA DECLARATION WAS NOT CONSISTENT WITH MODERN SCIENCE AND THEREFORE WAS UNACCEPTABLE TO HIM. HE SAID HE COULD ACCEPT THE NOTION THAT THE GSO IS A LIMITED NATURAL RESOURCE.

7. USSR (KOLOSSOV) AGREED WITH CANADA THAT THERE IS NO NEED FOR A COMPLETE AND FINAL DEFINITION OF OUTER SPACE. WHILE NOT WISHING TO ADDRESS THE SUBSTANCE OF THE BOGOTA DECLARATION, HE SAID THE DECLARATION CONTAINS REFERENCES TO NORMS AND STANDARDS OF SPACE LAW THAT ARE "UNJUST AND UNJUSTIFIED." FROM THE SOVIET POINT OF VIEW, THERE ARE FOUR FUNDAMENTAL ELEMENTS TO THE LEGAL STATUS OF THE GSO: (A) SINCE THE GSO IS PART OF OUTER SPACE, ALL RELEVANT PROVISIONS OF THE 1967 OUTER SPACE LIMITED OFFICIAL USE

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TREATY CAN BE APPLIED TO IT, AND ACCORDINGLY IT IS NOT SUBJECT TO CLAIMS OF NATIONAL SOVEREIGNTY, (B) THE LAUNCHING OF SATELLITES INTO THE GSO DOES NOT CREATE ANY RIGHT OF OWNERSHIP WITH RESPECT TO THAT ORBIT, (C) ALL STATES SHARE AN EQUAL RIGHT TO USE THE GSO, AND SUCH USE SHOULD NOT BE DETRIMENTAL TO OTHER STATES, (D) STATES SHOULD COOPERATE IN PLANNING THE LAUNCHING OF COMMUNICATIONS SATELLITES INTO THE GSO, BEARING IN MIND THE RELEVANT ITU DOCUMENTS.

8. BRAZIL (LINDENBERG SETTE) SUPPORTED ARGENTINA AND FRANCE, STRESSING THAT THE DEFINITION OF OUTER SPACE SHOULD BE A PRIORITY ITEM IN LSC.

9. SWEDEN (BERG) FULLY SUPPORTED CANADA'S STATEMENT REGARDING THE GSO.

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10. JAPAN (MATSUOZAWA) SAID THAT THE PRESENT LACK OF AGREEMENT ON THE DEFINITION OF OUTER SPACE IN THE LSC AND IN THE VARIOUS TREATIES AND CONVENTIONS HAD NOT RESULTED IN ANY SERIOUS PROBLEMS. THEREFORE, IT WOULD BE WRONG TO TRY TO DEFINE PRECISELY EITHER OUTER SPACE OR OUTER SPACE ACTIVITIES. HE COULD NOT SUPPORT THE CLAIMS OF SOVEREIGNTY BY CERTAIN EQUATORIAL COUNTRIES OVER THE GSO, BECAUSE THE GSO BELONGS IN OUTER SPACE (REFERRING TO ARTICLE II OF 1967 TREATY). HE CONCLUDED BY SAYING THAT THE POSITION OF THE EQUATORIAL STATES IS NOT BASED ON ANY PRINCIPLE OF INTERNATIONAL LAW, AND WHETHER OR NOT ANY PARTICULAR COUNTRY WAS A SIGNATORY TO THE TREATY WAS NOT AN ISSUE.

1. FRG (NEUBERT) SAID THERE WAS NO URGENT NEED FOR A SPECIAL DEFINITION OF OUTER SPACE, SINCE THE PRESENT RULES WERE QUITE ADEQUATE, AND HE SAID HIS GOVERNMENT WAS NOT IN A POSITION TO ACCEPT THE CLAIMS OF NATIONAL SOVEREIGNTY OVER PARTS OF THE GSO.
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12. CHAIRMAN WYZNER CLOSED DEBATE ON THIS AGENDA ITEM BY STATING THAT IN VIEW OF THE OPINIONS EXPRESSED BY VARIOUS DELS, FORMULATION OF A DEFINITION APPEARED IMPOSSIBLE AT THIS LSC SESSION. HE EXPRESSED HOPE THAT LSC WOULD CONTINUE TO CONSIDER THIS ISSUE IN LIGHT OF THE MANDATE FROM THE GENERAL ASSEMBLY.

13. ITALIAN DEL (LAY) THEN MADE A STATEMENT IN SUPPORT OF THE SOVIET-PROPOSED UNGA RES. COMMEMORATING THE 10TH ANNIVERSARY OF THE 1967 TREATY (REF D). A NUMBER OF COUNTRIES SUGGESTED MINOR CHANGES, PRIMARILY OF AN EDITORIAL NATURE, AND THE AMENDED VERSION WAS ACCEPTED AS A RECOMMENDATION TO THE PARENT COMMITTEE FOR GENERAL

ASSEMBLY ACTION.

14. MOON. THE CHAIRMAN OF WG-I ON THE MOON TREATY, PROF. HARASZTI (HUNGARY), SUBMITTED HIS REPORT TO THE LSC. MEXICO SUGGESTED THAT LAST YEAR'S WG REPORT, SHOWING PROVISIONS ALREADY AGREED TO, SHOULD BE APPENDED TO THE DOCUMENT. THE CHAIRMAN APPROVED THE PROPOSAL, AND THE REPORT OF WG-I WAS ACCEPTED.

15. RESPONDING TO CHAIRMAN WYZNER'S HOPE THAT THE WORK OF THE MOON TREATY WOULD BE COMPLETED NEXT YEAR, NIGERIAN DEL (MACAULAY) AGAIN RAISED THE ISSUE OF CONSENSUS PROCEDURES IN LSC (REF B). HE SAID ADHERENCE TO THIS PROCEDURE WAS THE SOLE REASON LSC HAS NOT BEEN ABLE TO COMPLETE THE WORK ON THIS TREATY. HE ASKED FOR CLARIFICATION OF WHERE THE CONSENSUS CONCEPT IN THE LSC ORIGINATED, SINCE HE DID NOT BELIEVE THAT CONSENSUS WAS A REQUIREMENT. WYZNER RESPONDED BY POINTING OUT THAT SINCE THE CONSENSUS RULE HAD BEEN ADOPTED IN THE PARENT COMMITTEE, IT CANNOT BE CHANGED BY THE LSC BUT IS A SUBJECT FOR THAT COMMITTEE. THE NIGERIAN DEL THEN AGREED TO THE REPORT OF WG-I.

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(FYI. OVER LUNCH, MACAULAY TOLD USDELOFF WHEATLEY THAT HE OR OTHERS MAY RAISE THE ISSUE OF THE SO-CALLED CONSENSUS REQUIREMENT AT THE PARENT COMMITTEE MEETING IN JUNE IN AUSTRIA. END FYI.)

16. REMOTE SENSING. AT OUTSET OF AFTERNOON SESSION, WG-III (REMOTE SENSION) ADOPTED ITS REPORT. CHAIRMAN TUERK RESOLVED ONLY REMAINING ISSUE (INCLUSION OF POSSIBLE DRAFT PRINCIPLE ON PERMANENT SOVEREIGNTY (REF B) ON THE BASIS OF CORRIDOR NEGOTIATIONS BY PLACING ENTIRE TEXT IN SPECIAL BRACKETS WITH NOTE REFERRING TO APPROPRIATE PARA OF REPORT, WHICH NOW EXPLICITLY STATES THAT SOME DELS OBJECTED TO INCLUDING THE UNAGREED TEXT IN THE APPENDIX. USDEL ACCEPTED THIS FORMULA IN SPIRIT OF ACCOMMODATION BUT REITERATED ITS STRONG BELIEF THAT TEXT SHOULD PROPERLY HAVE BEEN PLACED BY ITSELF IN A SEPARATE APPENDIX TO INDICATE THE CLEAR ABSENCE OF A COMMON ELEMENT. (FYI. COMPROMISE ON THIS ISSUE WAS NECESSARY TO PREVENT COMPLETE ISOLATION AND TO SUBDUE ATTACKS ON CONSENSUS PROCEDURE; IN LIGHT OF STRONG US STATEMENTS, SPECIAL BRACKETS, AND APPROPRIATE LANGUAGE IN BODY OF REPORT, THERE CAN BE NO DOUBT ABOUT TOTALLY UNAGREED NATURE OF THE POSSIBLE DRAFT PRINCIPLE WHEN ISSUE ARISES AGAIN. END FYI).

17. DBS. WG-II ON DBS CONVENED TO CONTINUE CONSIDERATION

OF CHAIRMAN'S DRAFT REPORT. AFTER SUBSTANTIAL DEBATE
ON TREATMENT OF DRAFT PREAMBLE (WHICH ENDED WHEN USSR
REFUSED TO PROCEED WITHOUT INTERPRETERS), IT WAS AGREED
(A) TO RETAIN THE ELLIPSIS IN PREAMBLE TO SIGNIFY
MISSING PARA(S), (B) TO REPRODUCE IN A SEPARATE
APPENDIX THE FOUR PARAS PROPOSED BY UK, MEXICO AND
CANADA-SWEDEN, AND (C) TO INCLUDE LANGUAGE IN THE REPORT
TO THE EFFECT THAT THE APPENDIX REFLECTS IDEAS PUT FORWARD
BY VARIOUS DELS AS BASIS FOR FURTHER DELIBERATION.
DISCUSSION ON TEXT OF REPORT TO CONTINUE TOMORROW.
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Message Attributes

Automatic Decaptioning: X
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Channel Indicators: n/a
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Disposition Date: 22 May 2009
Disposition Event:
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Status: NATIVE
Subject: OUTER SPACE LEGAL SUBCOMMITTEE - APRIL 6, 1977
TAGS: TSPA, AORG, ETEL, UN
To: STATE
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/6562bca7-c288-dd11-92da-001cc4696bcc
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